



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY - 5 2016

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Re: Citizen Petition to Repeal or Amend the EPA's Aquifer Exemption Regulations to Protect
Underground Sources of Drinking Water

Dear Ms. Mall, Mr. Noel, Ms. Anderson and Mr. Jantz,

Thank you for your letter of March 23, 2016, to Gina McCarthy, Administrator of the U.S. Environmental Protection Agency (EPA) and your petition regarding the EPA's aquifer exemption regulations. I have been asked to provide this interim response to your petition because my division oversees implementation of the agency's Safe Drinking Water Act (SDWA) regulations, including the aquifer exemption regulations discussed in your petition.

Your petition requests the agency to:

1. Repeal or amend the EPA's aquifer exemption regulations;

2. Fully review previously granted exemptions and protect any aquifers which are still of good enough quality that they have the potential to serve as a drinking water source, now or in the future;
3. Impose a moratorium on granting any new exemptions or expansions of existing exemptions until new rules are in place, in order to ensure that protected aquifers are not contaminated as a result of decisions made under existing policies while the EPA considers the petition; and
4. Treat the petition as a comment on all pending and future exemption applications, and give the information contained within the petition full consideration when evaluating such applications.

The agency is currently in the process of reviewing each of these requests. As we evaluate the issues highlighted in your petition, we would appreciate an opportunity to meet with you to better understand the basis of your concerns and discuss the agency's current work on aquifer exemptions. To that end, we will follow-up to arrange a mutually agreeable time to meet.

In the meantime, I want to let you know about some of the actions the agency has taken and plans to take in the near future to improve the aquifer exemption process and better protect underground sources of drinking water, consistent with the SDWA.

- The agency has been proactively working to bring national consistency to the aquifer exemption review and decision-making process.
- On July 24, 2014, the EPA Office of Groundwater and Drinking Water sent a memorandum to the EPA regional Water Division Directors in an effort to promote a more consistent and predictable process for review of aquifer exemption requests ("Enhancing Coordination and Communication with States on Review and Approval of Aquifer Exemption Requests Under SDWA"). That memorandum included a discussion of the need for robust recordkeeping and management of aquifer exemption data.
- To further support improved data management as well as public transparency, the agency is currently compiling an inventory of approved aquifer exemptions nationwide and plans to finalize and release the dataset by the end of 2016. The dataset will feature aquifer exemption locations to increase awareness of areas where aquifers or portions of aquifers are exempt from the protections of the SDWA.
- The agency is working with states to provide additional clarity and technical information pertinent to the determination that an aquifer proposed for exemption does not currently serve as a source of drinking water, taking into consideration groundwater movement and public and private wells outside the area proposed for exemption.
- As part of its oversight role, EPA Region 9 conducted a detailed audit of the state of California's Class II UIC program in 2011, and a review of California's aquifer exemptions in 2012. The agency's efforts have spurred California to engage in a significant and resource-intensive effort to correct deficiencies in the program, including enacting new state regulations requiring the shut-in of improperly permitted wells and proposed UIC regulatory revisions governing all aspects of the Class II program, actions that will lead to an updated and vastly improved program in California under the SDWA Section 1425.

One of your petition requests is that the agency impose a moratorium on all aquifer exemption reviews. One of the agency's highest priorities is the protection of drinking water, including underground sources of drinking water. Instead of imposing a moratorium on aquifer exemption reviews at this time, the actions under the existing regulatory scheme described above are more likely to advance our goal of

greater protection of underground sources of drinking water (under the SDWA) while the agency carefully evaluates the specific issues that you raised in the petition. Additionally, it would be inappropriate for the agency to issue a national moratorium on reviewing aquifer exemption requests without providing the regulated community, who relies on and operates under the underground injection control regulations in the course of doing business, an opportunity for notice and comment. A moratorium would have a significant impact on the oil, gas and minerals industries by effectively shutting down the permitting process at many sites. As a result, the agency would likely become mired in protracted litigation, draining our limited resources. We believe those resources are better spent on developing a more effective approach to address the issues raised in your petition.

Another request is that the agency treat the petition as a comment on all of the agency's aquifer exemption reviews going forward. Aquifer exemptions are site-specific determinations, which are proposed for EPA approval by state or tribal primacy agencies, or by operators where the agency directly implements the UIC program. In any case, the agency thoroughly evaluates requests for exemptions from the protections under the SDWA on a case-by-case basis. Consistent with the EPA regulations at 40 C.F.R. 144.7(b)(3) and 145.32, as well as the agency's public participation policies, where the EPA is the primacy agency, or when the EPA acts on an aquifer exemption request from a state or tribal primacy agency for a substantial program revision, the EPA provides public notice and an opportunity for members of the public to provide written comment and request a public hearing. When the agency reviews an aquifer exemption request submitted by a state or tribal primacy agency for a non-substantial program revision, the EPA evaluates whether the primacy agency conducted an adequate public notice of the aquifer exemption and provided an opportunity for a public hearing as required by the EPA's regulations (40 C.F.R. 144.7(b)(3)).

In addition to providing an opportunity for a public hearing, primacy agencies typically provide the public with an opportunity for written comment as well. For specific aquifer exemption requests, where the agency or a member of the public identifies concerns about the adequacy of the public participation process, the agency addresses these concerns based on the circumstances of that exemption review, and will continue to do so. Your petition cites an example where the agency has taken such measures in the past on its own initiative and in response to a request from the public. Since the agency's determinations on aquifer exemptions are site-specific, comments are most valuable if they are made within the context of the conditions at a particular site. Therefore, we think providing comment on specific proposed aquifer exemption requests is the best approach to ensure that both your organizations and other members of the public have an opportunity to comment on these actions while the agency considers the broader issues raised in your petition. Further, we encourage you to engage directly with the primacy agency so that your concerns and issues can be more effectively addressed within the context of each site-specific aquifer exemption, consistent with the opportunity afforded all members of the public.

Thank you again for your petition. We will contact you to arrange a mutually agreeable time to meet in the near future and we look forward to meeting with you.

Sincerely,

A handwritten signature in dark ink, appearing to read "Anita Thompson", is written over the typed name.

Anita Thompson
Director, Drinking Water Protection Division
Office of Ground Water and Drinking Water